

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
LEGAL SERVICES DIVISION
HEARINGS BUREAU

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 10-90

INTERNATIONAL BROTHERHOOD)
OF ELECTRICAL WORKERS, LOCAL)
UNION 623,)

Complainant,)

-vs-

STATE OF MONTANA, DEPARTMENT)
OF ADMINISTRATION,)

Defendant.)

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
ORDER

* * * * *

I. INTRODUCTION

A hearing was held in the above cited matter on November 26, 1990 before Joseph V. Maronick, duly appointed hearing officer of the Labor Commissioner. The complainant was represented by Jay McDonald and the defendant was represented by Steve Johnson. Parties present, duly sworn and offering testimony included Carl Thompson and Steve Johnson.

II. ISSUE

Whether the defendant, State of Montana, Department of Administration, violated Section 39-31-401(5) MCA by withdrawing from the complainant, Local Union 623, International Brotherhood of Electrical Workers (IBEW) on January 17, 1990, recognition for all electrical workers at Montana Developmental Center (MDC).

1
2 III. FINDINGS OF FACT

3 1. By final order of the Montana Board of Personnel Appeals
4 dated October 19, 1990, the MDC was found to be a separate and
5 distinct bargaining unit. The order of October 19, 1990 was
6 appealable within twenty (20) days of issuance. The order was not
7 appealed.

8 2. The unit at MDC is composed of one maintenance electrical
9 worker, Carl R. Thompson. On April 27, 1989, Mr. Thompson filed a
10 decertification petition with the Montana Board of Personnel
11 Appeals alleging all electrical maintenance employees represented
12 by Local 623 IBEW at MDC no longer wished to be represented by IBEW
13 as their exclusive bargaining representative. An election was held
14 but no votes were cast. Thereafter on December 28, 1989, Mr. Jack
15 Calhoun, Chief, Appeals Bureau, advised the defendant of the
16 election results and indicated that the complainant union remained
17 the exclusive representative for bargaining purposes for all
18 maintenance electrical workers employed at MDC.

19 3. On January 17, 1990, the defendant notified the
20 complainant that, based on objective considerations, the defendant
21 was withdrawing recognition from the complainant as the exclusive
22 representative for the MDC unit. The objective considerations
23 listed were:

- 24 1. The bargaining unit comprises only one employee;
25 2. The filing of a decertification position by that
employee;
3. Employee dissatisfaction with the union communicated by

- 1
- 2 the employee during testimony in a decertification
- 3 hearing;
- 4 4. The only employee in the bargaining unit is not a member
- 5 of the union; and
- 6 5. The employee's testimony regarding union inactivity in
- 7 the MDC unit.

8

9 As a result of the state's withdrawal of

10 recognition, it will be necessary to delete all

11 references to the Montana Developmental Center unit in

12 the 1989-1991 agreement which the parties are still

13 negotiating.

14

15 4. The complainant contends that in violation of Article II,

16 Section 2 and 3 of the union contract, the defendant did not

17 discharge Mr. Carl Thompson who did not apparently pay the union

18 each month a representation fee.

19

20 5. The defendant contends the December 28, 1989 letter from

21 Mr. Calhoun does not extend official Board of Personnel Appeals

22 certification to the defendant for the unit at MDC. Additionally,

23 the defendant points out that on April 27, 1989, Mr. Thompson

24 petitioned to be decertified from representation by Local 623,

25 IBEW. At a hearing on October 4, 1989, Mr. Thompson testified he

was unrepresented by the Local for the entire time of his

employment at MDC and did not wish continued representation by the

Local. During the hearing in this matter on November 26, 1990, Mr.

Thompson indicated he continued not to wish representation by Local

623 of IBEW.

1
2 IV. CONCLUSIONS OF LAW

3 1. The record presented shows the union does not enjoy
4 majority status.

5 2. In Thomas Industries, Inc., v. LNRB, CA 6, 111 LRRM 2233,
6 2235, (1982), the Court ruled that:

7 the employer must and may collectively bargain only
8 with a representative who represents a majority of the
9 employees; it is an Unfair Labor Practice...to bargain
10 with an union which does not have majority support. See
11 NLRB v. West Sand and Gravel Company., 612 F.2d 1326,
12 1328, 103 LRRM 2255 (1st Cir. 1979).

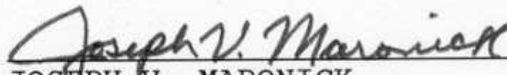
13 The defendant is prohibited from bargaining with the
14 complainant if the complainant does not enjoy majority status. The
15 record clearly shows that the complainant does not enjoy majority
16 status and therefore, the current Unfair Labor Practice Charge is
17 without merit.

18 V. ORDER

19 Unfair Labor Practice Charge #10-90 is hereby dismissed.

20 Entered and dated this 31 day of December, 1990.

21 BOARD OF PERSONNEL APPEALS

22 
23 JOSEPH V. MARONICK
24 Hearing Officer
25